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REMARKS

In the Final Office Action mailed July 19, 2007, claims 1-38, 59-62 and 81-93 were pending and stand rejected. Claim 8 has been amended to correct a clerical error and add the word "curved" to provide proper antecedent basis. Claim 61 has been amended to correct a grammatical error. The proposed amendments correct matters of form and do not require further search or consideration of new issues, and entry of the same is believed proper. Reconsideration of the final rejection and allowance of the present application in view of the remarks herein are respectfully requested.

Applicants respectfully traverse the finality of the Office Action and request withdrawal of the same. More particularly, new claim 81 presented in the previous response is essentially the same as original dependent claim 19 rewritten in independent form. The Manual of Patent Examining Procedure (MPEP) §706.07(a) recites:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

The rejection of at least claim 81 was neither necessitated by applicant's amendment nor based on information submitted in an IDS in the time period specified in MPEP §706.07(a). Therefore, it is respectfully submitted that the finality of the present office action is premature and withdrawal of the Finality of the same is hereby requested.

Claims 5-11, 20-27 and 83-88 were rejected under 35 USC §112, second paragraph. The examiner considered the use of "first and second members" to be misleading since "Applicants" appear to be claiming the geometry of the visualization opening." Claims 5, 20 and 83 introduce the "first member" and the "second member" into the claims. A review of these claims in view of the specification indicates that this terminology in the claims is directed to aspects of the intermediate portion of the plate that extend along the sides of the visualization opening. For example, claim 5 recites "wherein said intermediate portion includes a first member along one side of said visualization opening and a second member along the opposite side of said visualization opening, said first and second members extending between said first and second connection portions." The use of the term "members" is not misleading since those same terms

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 13 of 25

are used in the specification to describe the invention and are fully supported by the specification. For example, page 12, lines 17-19, discloses that intermediate portion 34 includes a first member 61 extending along one side of visualization opening 60 and a second member 63 extending along the opposite side of visualization opening 60.

A review of the specification also indicates that the elements of the intermediate portion of the plate that extend along the sides of the visualization opening are consistently identified as "members", and nowhere did it appear that these elements were identified as a "portion" or "portions". The "first member" and the "second member" unambiguously refer to the part of the intermediate portion of the plate that extends along the sides of the visualization opening. Accordingly, withdrawal of this basis of the rejection of claims 5-11, 20-27 and 83-88 is respectfully requested.

Claims 1-14, 18, 20-22, 81-88, 92 and 93 stand rejected under 35 USC §102(e) as being anticipated by U.S. Patent App. Pub. No. 2003/0105462 to Haider. It is noted that Haider is potentially prior art under 35 USC §102(e). Applicants reserve the right to remove Haider as a reference by swearing behind its filing date with an affidavit under 37 CFR §1.131 in this application or in any continuing applications.

The examiner states that "Haider discloses an elongate bone plate including an opening or 'a visualization opening' having an hourglass shape with convexly and concavely curved sidewalls (Fig. 2 and paras. [0027]-[0034].)" A review of the specification of Haider does not reveal any discussion or disclosure regarding the element that is located near the center of the plate. Haider does not disclose that this element is a visualization opening or any sort of opening extending through an intermediate portion of the plate that would permit visualizing a space between adjacent vertebrae when the plate is attached to adjacent vertebrae. The examiner has assumed that this element extends through the plate, but there is no disclosure of this arrangement in Haider. Another possibility is that the center element includes a wall extending thereacross at the bottom surface of the plate that prevents the formation of a visualization opening. Given the range of possibilities for the structure of the center element and the lack of any specificity in Haider regarding the same, Haider cannot support a *prima facie* case for rejecting claim 1 as being anticipated thereby.

Claims 2-14, 18, 92 and 93 depend directly or indirectly from claim 1 and distinguish Haider at least for the reasons claim 1 does and for other reasons. For example, claim 8 recites "wherein

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 14 of 25

said first and second members each include a first width between respective ones of said concavely outer wall surface and said convexly curved side wall of said visualization opening." Claim 9 depends from claim 8 and further recites "wherein said visualization opening includes a second width between said convexly curved side walls, said second width being greater than said first width." Haider is completely silent as to the respective widths of the center element of the plate and the members extending along the sides of the center element, and therefore cannot anticipate claim 9. Claim 10 depends from claim 9 and recites "wherein said second width is at least as great as the combined first width of said first and second members." Haider also cannot anticipate claim 10 since there is no disclosure that the width of the center element is greater than the combined width of the first and second members extending along the center element. Accordingly, withdrawal of the rejection of these claims depending from claim 1 is respectfully requested.

Claim 20 recites, in combination with the other elements recited therein, that "wherein said first and second members each include a first width between an outer side surface of said plate and an inner side wall of said visualization opening, said visualization opening including a second width between inner side walls of said first and second members, said second width being greater than the combined first width of said first and second members." In addition to the lack of disclosure that the center element is a visualization opening, a review of Haider reveals that it is completely silent as to the width of the center element of the plate and the members extending along the sides of the center element. Thus, there is no disclosure that the center element includes a width that is greater than combined width of the members on the sides of the center element. Therefore, a *prima facie* case for rejecting claim 20 as anticipated by Haider has not been established, and withdrawal of the rejection of claim 20 is respectfully requested.

Claims 21 and 22 depend directly or indirectly from claim 20 and distinguish Haider at least for the reasons claim 20 does. Accordingly, withdrawal of the rejection of these claims is respectfully requested.

Claim 81 recites, in combination with the other elements recited therein, "wherein each of said connection portions includes a pair of openings each for receiving a bone anchor therethrough to attach said connection portion to the respective adjacent vertebrae and each of said connection portions includes a retaining device engageable to said plate to prevent said bone anchors in said pair of openings from backing out of said plate." In addition to the lack of disclosure of a visualization

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 15 of 25

opening as recited in claim 81, a review of Haider finds no disclosure of at least these other features recited in claim 81. Haider discloses bone screws 24 with a head 30 having a plurality of spring segments 32. Spring segments 32 have a contracted position that allows the screw to have polyaxial movement relative to the plate and an extended position where the screw head engages the plate to secure the screw in place to prevent it from pivoting. However, Haider does not disclose any retaining device engageable to the plate to prevent the screws in the plate holes from backing out of the plate. Accordingly, Haider cannot anticipate claim 81 and withdrawal of this basis of the rejection of claim 81 is respectfully requested.

Claims 82-88 depend directly or indirectly from claim 81 and distinguish Haider at least for the reasons claim 81 does and for additional reasons. For example, claim 86 recites "wherein said first and second members each include a first width between respective ones of said concavely outer wall surface and said convexly curved side wall of said visualization opening." Claim 87 depends from claim 86 and recites "wherein said visualization opening includes a second width between said convexly curved side walls, said second width being greater than said first width." As discussed above with respect to claims 9 and 20, Haider is completely silent as to the relative widths between the center element of the plate and the members along the sides of the center element. Therefore, Haider cannot anticipate claim 87. In addition, claim 88 depends from claim 87 and recites "wherein said second width is at least as great as the combined first width of said first and second members." For these same reasons, Haider also cannot anticipate claim 88. Accordingly, withdrawal of this basis of the rejection of claims 82-88 depending from claim 81 is respectfully requested.

Claims 36-38 stand rejected under 35 USC §102(b) as anticipated by U.S. Patent No. 5,423,826 to Coates et al. The examiner did not consider the arguments presented in the previous response regarding the rejection of these claims over Coates et al. persuasive since the examiner noted that guide member 180 is spaced proximally from the plate when the holding system is engaged to the plate as shown in Figure 17. A review of Figure 17 did not reveal any guide 180. Figure 19 does show a drill-tap sleeve 180 in an exploded view with respect to holder-drill guide 150. Holder-drill guide 150 includes two feet 157 that each includes two holes 158 that align with the screw bores 27 at each end of plate 20. See col. 13, lines 6-9. When holder-drill guide 150 is coupled to plate 20, drill-tap sleeve 180 is positioned in one of the holes 158 of one of the feet 157 to

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 16 of 25

guide a drill bit and bone tap through the corresponding screw bore 27. Accordingly, Coates et al. discloses that drill-tap sleeve 180 is secured in position relative to plate 20 by positioning it into hole 158 of a foot 157. As shown in hidden lines in Figure 17 and in cross-sectional view in Figure 19, hole 158 extends to the top surface of plate 20 so that when drill-tap sleeve 180 is positioned relative to plate 20 to guide placement of the drill and tap through the aligned bore 27, drill-tap sleeve 180 is not spaced proximally from plate 20, but rather is positioned through hole 158 of foot 157 to bore 27 of plate 20. Thus, Coates et al. fail to disclose "a guide mechanism along said actuating system including at least one guide member spaced proximally from said plate when said holding system is engaged to said plate and with said at least one guide member positioned relative to said plate to guide placement of a bone engaging fastener through said at least one hole" as recited in claim 36. Accordingly, withdrawal of this basis of the rejection of claim 36 is respectfully requested.

Claims 37-38 depend from claim 36 and are allowable at least for the reasons claim 36 is allowable and for other reasons. For example, claim 38 recites "wherein said holding instrument further comprises an alignment mechanism adjacent said holding system and distal of said guide mechanism, said alignment mechanism including at least one alignment member extending laterally from said holding system along said at least one bone engaging fastener hole of said plate." The examiner asserts that member 159 is a laterally extending alignment member. However, Coates et al. do not disclose that element 159 extends along a bore 27 of plate 20. Rather, Coates et al. disclose that element 159 is a notch on each end of plate 20 that receives hook 161 of foot 157. Accordingly, notch 159 is not a part of holder-drill guide 150, nor does it extend laterally from a holding system of holder-drill guide 150. Furthermore, hook 161 does not extend laterally from any holding system along a bore 27 of plate 20. Rather, hook 161 is positioned to extend along the bottom surface of plate 20 so that it engages plate 20, but is located between bores 27, as shown in Figure 16. Thus, Coates et al. do not disclose claim 38. Accordingly, claims 37-38 are also allowable and withdrawal of the rejection of these claims depending from claim 36 is respectfully requested.

Claims 23-27 stand rejected under 35 USC §103(a) as unpatentable over Haider alone.

Claims 23-27 distinguish Haider at least for the reasons claim 1 does and for other reasons. The examiner states that Haider fails to disclose the claimed widths and length-to-width ratios. However, the examiner asserts that it would have been obvious "to have provided a visualization

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 17 of 25

opening with the claimed length-to-width ratios, since it has been held where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPG 233." Concerning reference made to "*In re Aller*", Applicants respectfully disagree with citations from the decision. Actually, *In re Aller* provides that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." MPEP §2131.03 goes on to note that prior art which teaches a range within, overlapping, or touching the claimed range anticipates if the prior art range discloses the claimed range with "sufficient specificity." In particular, MPEP 2131.03 states:

When the prior art discloses a range which touches, overlaps or is within the claimed range, but no specific examples falling within the claimed range are disclosed, a case by case determination must be made as to anticipation. In order to anticipate the claims, the claimed subject matter must be disclosed in the reference with "sufficient specificity to constitute an anticipation under the statute." What constitutes a "sufficient specificity" is fact dependent. If the claims are directed to a narrow range, the reference teaches a broad range, and there is evidence of unexpected results within the claimed narrow range, depending on the other facts of the case, it may be reasonable to conclude that the narrow range is not disclosed with "sufficient specificity" to constitute an anticipation of the claims. The unexpected results may also render the claims unobvious. The question of "sufficient specificity" is similar to that of "clearly envisaging" a species from a generic teaching. MPEP §2131.03.

Moreover, in related MPEP §2144.05 concerning obviousness of ranges, the PTO notes that overlap of ranges establishes a *prima facie* case of obviousness. The MPEP states:

In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990)

"[A] prior art reference that discloses a range encompassing a somewhat narrower claimed range is sufficient to establish a *prima facie* case of obviousness." *In re Peterson*, 315 F.3d 1325, 1330, 65 USPQ2d 1379, 1382-83 (Fed. Cir. 2003). However, if the reference's disclosed range is so broad as to encompass a very large number of possible distinct compositions, this might present a situation analogous to

¹ MPEP §2131.03 (rev. 2, May 2004) pages 2100-76 to 2100-77.

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 18 of 25

the obviousness of a species when the prior art broadly discloses a genus. *Id.* See also *In re Baird*, 16 F.3d 380, 29 USPQ2d 1550 (Fed. Cir. 1994); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); MPEP § 2144.08. . . .

In the present case, Haider does not disclose any range of ratios for the length-to-width of the center element of the plate. The specification of Haider is completely silent as to any structure of the center element. Accordingly, the examiner correctly holds that Haider is not sufficient to anticipate the claim. However, Haider cannot be properly held to render obvious claims 23-27 since its silence as to any length-to-width ratio of the center element can provide no teaching or suggestion of the claimed ranges recited in claims 23-27. Since the examiner has not provided any reason or suggestion to modify the plate in Haider to arrive at the claimed ratios in claims 23-27, the examiner appears to use the present application as a template to modify Haider through a hindsight reconstruction to arrive at claims 23-27, which is not proper. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441, F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727 (2006)). In the present case, the examiner fails to articulate any reasoning with any rational underpinning as to why one skilled in the art would modify Haider to arrive at the invention recited in claims 23-27. Accordingly, a *prima facie* case for the §103 rejection of claims 23-27 over Haider alone has not been established, and withdrawal of this basis of the rejection of claims 23-27 is respectfully requested.

Claims 1-15, 18-27, 81-88, 92 and 93 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 6,413,259 to Lyons et al. alone. The Final Office Action states that Lyons et al. fail to disclose an hour-glass shape for the visualization opening, the curvatures of the sidewalls of the visualization opening, and the length-to-width ratios of the visualization openings. The examiner asserts that it “would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to have provided the visualization opening with the claimed shapes of the walls, since applicant has not disclosed that this solves any stated problem or is anything more than one of numerous shapes of configurations a person of ordinary skill in the art would find obvious for the purpose of providing a visualization opening. *In re Dailey*

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 19 of 25

and Eilers, 149 USPQ 47 (1966)." The assertion is traversed, and it is respectfully submitted that the examiner has failed to provide a *prima facie* case for rejecting claims 1-15, 18-27, 81-88, 92 and 93 for at least the reasons the follow.

The specification in the present application includes disclosure of the advantages provided and problems solved by the shape of the visualization openings, the walls around the visualization opening, and the members along the sides of the visualization opening. Examples of such disclosure can be found, for example, at lines 7-17 of paragraph 57, paragraph 58, and lines 1-11 of paragraph 59, paragraph 77, paragraphs 79-80, and paragraph 89 of the publication of the present application. In summary, the claimed features provide optimum visualization capabilities, a reduced lateral profile of the plate along the intermediate portion of the plate and visualization openings, while also providing the plate with sufficient load bearing strength and minimizing stress concentrations. Accordingly, the examiner's assertion is traversed.

It is not apparent, nor has the examiner explained, why the disclosure of a circular aperture 28 in Lyons et al. would have suggested the claimed shape for the visualization opening, the curvatures of the sidewalls of the visualization opening, and the length-to-width ratios of the visualization opening. The examiner attempts to overcome these deficiencies in the prior art by citing *In re Dailey*, 149 USPQ 47 (CCPA 1966) for the proposition that no patentable moment is derived from the claimed shapes. The application of *Dailey* is not legally sound in the present circumstance. In *Dailey*, the court stated that "[a]ppellants have presented no argument which convinces us that the particular configuration of their container is significant or is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious." *In re Dailey*, 149 USPQ at 50. In contrast, applicants' specification (see for example, at lines 7-17 of paragraph 57, paragraph 58, and lines 1-11 of paragraph 59, paragraph 77, paragraphs 79-80, and paragraph 89) establishes that the shape of the visualization opening, the walls around the visualization opening, and the members along the sides of the visualization opening solve, among other problems, problems associated with optimizing visualization capabilities while providing the plate with sufficient load bearing strength and minimizing stress concentrations. Thus, the claimed features are significant in that they solve a stated problem. Accordingly, it is respectfully submitted that the claimed features cannot be properly dismissed as an obvious matter of design choice.

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 20 of 25

Withdrawal of the §103 rejection of claims 1-15, 18-27, 81-88, 92 and 93 in view Lyons et al. alone is respectfully requested.

Claims 16-17, 28-35, and 89-91 stand rejected under 35 USC §103(a) as being unpatentable over Lyons et al. in view of U.S. Patent No. 6,193,721 to Michelson. The examiner states that the combination of Lyons et al. and Michelson teaches all the elements of the claimed invention except for the claimed shapes of the walls of the visualization opening. The examiner then asserts, in the same manner as the §103 rejection based on Lyons et al. alone above, that it "would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to have provided the visualization opening with the claimed shapes of the walls, since applicant has not disclosed that this solves any stated problem or is anything more than one of numerous shapes or configurations a person of ordinary skill in the art would find obvious for the purpose of providing visualization opening, In re Dailey and Eilers, 149 USPQ 47 (1966)." This rejection is traversed for the same reasons the §103 rejection based on Lyons et al. alone was traversed above. As established above, Applicants' specification establishes that the shape of the visualization opening, the walls around the visualization opening, and the members along the sides of the visualization opening solve, among other problems, problems associated with optimizing visualization capabilities while providing the plate with sufficient load bearing strength and minimizing stress concentrations. Thus, the claimed features are significant in that they solve a stated problem. Accordingly, it is respectfully submitted that the claimed features cannot be properly dismissed as an obvious matter of design choice. Withdrawal of the rejection of claims 16-17, 28-35, and 89-91 over Lyons et al. in view of Michelson is respectfully requested.

Claims 1-15, 18, 20-27, 92 and 93 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,954,722 to Bono et al. alone. The examiner states that Bono et al. fail to disclose the visualization opening having an hourglass shape, concave/convex curvatures of the visualization opening walls, and the claimed width and length-to-width ratios. The examiner then asserts that the rejected claims would have been "an obvious matter of design choice to one skilled in the art at the time the invention was made to have provided the visualization opening with the claimed shapes of the walls, since applicant has not disclosed that this solves any stated problem or is anything more than one of numerous shapes or configurations a person of ordinary skill in the art would find obvious for the purpose of providing visualization opening. In re Dailey and Eilers,

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 21 of 25

149 USPQ 47 (1966)." This rejection is traversed for the same reasons the §103 rejections based on Lyons et al. alone were traversed above. As demonstrated above, Applicants' specification establishes that the shape of the visualization opening, the walls around the visualization opening, and the members along the sides of the visualization opening solve, among other problems, problems associated with optimizing visualization capabilities while providing the plate with sufficient load bearing strength and minimizing stress concentrations. Thus, the claimed features are significant in that they solve a stated problem. Accordingly, it is respectfully submitted that the claimed features cannot be properly dismissed as an obvious matter of design choice. Withdrawal of the §103 rejection of claims 1-15, 18, 20-27, 92 and 93 over Bono et al. alone is respectfully requested.

Claims 59-62 stand rejected under 35 USC §103(a) as being unpatentable over Bono et al. in view of U.S. Patent No. 6,514,274 to Boucher et al. Bono et al. disclose that locking plate 12 includes body portion 20 that includes two walls 23 that define two graft holes 25. The intermediate portion of the plate including graft holes 25 is located between connection portions of the plate that are located for connection to the vertebrae with bone screws 18, as shown in Fig. 1. The examiner states that Bono et al. fail to disclose the plate being made from translucent material. The examiner cites Boucher et al. and asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the Bono et al. plate of a translucent material as taught by Boucher et al. to enable visual alignment of the plate with the underlying bone holes.

Boucher et al. teach a rotator cuff buttress plate that is adapted to support and disperse a load from sutures employed to secure a rotator cuff relative to a humerus. Boucher et al. also teach the use of a second buttress plate adapted to engage an outer portion of the rotator cuff with the sutures passing through apertures of both plates to distribute the load over both buttress plates. See col. 2, lines 22-62. Boucher et al. teach that the buttress plates are translucent to enable visual alignment with bone holes found in the humerus. See col. 4, lines 17-20 and lines 50-51. Thus, Boucher et al. teach providing buttress plates that are translucent for connection with the bone to facilitate alignment of the plate with holes formed in the bone. However, Boucher et al. does not teach or suggest any translucent plate structure extending between these buttress plates that would permit visualization of the space between the buttress plates.

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 22 of 25

In contrast to the teachings in the cited references, the structure recited in claim 59 provides the plate with first and second connection portions attachable to respective one of adjacent vertebrae and an intermediate portion extending between the connection portions that is comprised of a translucent material for visualizing the space between the adjacent vertebrae when the plate is attached to the adjacent vertebrae. Neither Bono et al. nor Boucher et al., taken alone or together, support a *prima facie* case for rejecting claim 59 since neither teaches or suggests an intermediate portion of the plate that is comprised of translucent material to visualize the space between the bone structures to which the connection portions of the plate are attached. The examiner asserts that the motivation to construct the plate of Bono et al. with translucent material is to enable visual alignment of the plate with underlying bone holes. However, this motivation is not applicable to the intermediate portion of the plate that extends along the space between the bones of translucent material since there are no bone holes underlying the intermediate portion to visualize. Accordingly, a *prima facie* case for rejecting claim 59 as unpatentable over Bono et al. in view of Boucher et al. has not been established, and withdrawal of this basis of the rejection of claim 59 is respectfully requested.

With respect to claims 60-62 depending from claim 59, these claims are allowable at least for the reasons claim 59 is allowable and for other reasons. For example, claim 61 recites features that the examiner previously admitted where not disclosed in Bono et al., and Boucher et al. fail to remedy the deficiencies of Bono et al. Specifically, claim 61 recites "wherein said visualization opening includes at least one convexly curved side wall extending along the longitudinal axis and is further defined by upper and lower end walls having concave curvatures across said longitudinal axis." Since neither reference discloses or suggests a visualization opening with these features, the combination of references also fails to teach or suggest all the elements of claim 61, and a *prima facie* case for rejecting claim 61 has not been established.

Claims 59-62 stand rejected under 35 USC §103(a) as being unpatentable over Lyons et al. in view of Boucher et al. Lyons et al. disclose that plate 12 includes regions 24 in which the bone screws 16 are inserted to engage the plate to the underlying vertebrae. Lyons et al. also disclose that plate 12 includes intermediate regions between regions 24 that include apertures 28 to provide a view of the underlying bone structure and provide a location for the bone graft. See col. 5, lines 36-

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 23 of 25

38. However, there is no disclosure or teaching that the intermediate regions of the plate in Lyons et al. are attached to the underlying bone structure.

The examiner states that Lyons et al. fail to disclose the plate being made from translucent material. The examiner cites Boucher et al. and asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the Lyons et al. plate of a translucent material as taught by Boucher et al. to enable visual alignment of the plate with the underlying bone holes. As discussed above, Boucher et al. teach providing buttress plates that are translucent for connection with the bone to facilitate alignment of the plate with holes formed in the bone. However, Boucher et al. do not teach or suggest any translucent plate structure extending between these buttress plates that would permit visualization of the space between the buttress plates.

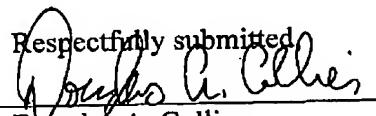
In contrast to the teachings in the cited references, the structure recited in claim 59 provides the plate with first and second connection portions attachable to respective one of adjacent vertebrae and an intermediate portion extending between the connection portions that is comprised of a translucent material for visualizing the space between the adjacent vertebrae when the plate is attached to the adjacent vertebrae. Neither Lyons et al. nor Boucher et al., taken alone or together, support a *prima facie* case for rejecting claim 59 since neither teaches or suggests a plate with an intermediate portion between connecting portions that is comprised of translucent material to visualize the space between bone structures when the connecting portions are attached to the bone structures. The examiner asserts that the motivation to construct the plate of Lyons et al. with translucent material is to enable visual alignment of the plate with underlying bone holes. However, this motivation is not applicable to the intermediate regions of the plate in Lyons et al. since there is no disclosure that the intermediate regions are attached to bone, and there are no bone holes underlying the intermediate region with which to align the intermediate region. Accordingly, a *prima facie* case for rejecting claim 59 as unpatentable over Lyons et al. in view of Boucher et al. has not been established, and withdrawal of this basis of the rejection of claim 59 is respectfully requested.

With respect to claims 60-62 depending from claim 59, these claims are allowable at least for the reasons claim 59 is allowable and for other reasons. For example, claim 61 recites features that the examiner previously admitted where not disclosed in Lyons et al., and Boucher et al. fail to

Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 24 of 25

remedy the deficiencies of Lyons et al. Specifically, claim 61 recites "wherein said visualization opening includes at least one convexly curved side wall extending along the longitudinal axis and is further defined by upper and lower end walls having concave curvatures across said longitudinal axis." Since neither reference discloses or suggests a visualization opening with these features, the combination of references also fails to teach or suggest all the elements of claim 61, and a prima facie case for rejecting claim 61 has not been established.

In view of the foregoing remarks, it is respectfully submitted that examiner has failed to establish a proper prima facie case for rejecting the claims, and the application including claims 1-38, 59-62 and 81-93 is believed in condition for allowance. The examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

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Response to Final Office Action
Application Serial No. 10/603,471
Atty Docket No. MSDI-259/PC757.00
Page 25 of 25